Supreme Court, U.S.
FILED
JAN 16 1996
OFFICE OF THE CLERK

No. 95-1136

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

GREGORY MURRAY,
Petitioner,

v.

DETROIT RIVERVIEW HOSPITAL, DETROIT-MACOMB HOSPITAL CORP., DETROIT RIVERVIEW HOSPITAL WORKERS LOCAL 2435, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFL-CIO), a labor organization, and MICHIGAN AFSCME COUNCIL 25 (AFL-CIO), a labor organization,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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January 16, 1996

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

35 pp

QUESTIONS PRESENTED *

I.

WHAT STANDARD SHOULD DEFINE THE RATIONALITY OF THE UNION'S ACTIONS FOR THE PURPOSE OF DECIDING WHETHER ITS HANDLING OF A DISCHARGE GRIEVANCE WAS "ARBITRARY," IN VIOLATION OF ITS DUTY OF FAIR REPRESENTATION?

II.

DOES A UNION BREACH ITS DUTY OF FAIR REPRESENTATION BECAUSE ITS KNOWING FAILURE TO DO A MINISTERIAL ACT THAT, BY OBJECTIVE STANDARDS, IT SHOULD HAVE KNOWN IT WAS REQUIRED TO DO AND THAT AVAILABLE EVIDENCE INDICATED IT *DID* KNOW THAT IT WAS REQUIRED TO DO CAUSED AN EMPLOYEE'S RIGHT TO A HEARING ON THE MERITS OF HIS DISCHARGE CASE TO BE EXTINGUISHED?

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* All parties to the proceeding in the court below are listed in the caption.

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OPINIONS BELOW

The lower courts' decisions in this case are not reported, officially or unofficially. The district court's decision appears at App. 10a-12a; the decision on appeal appears at App. 1a-7a.

JURISDICTION

The court of appeals decision was filed on August 29, 1995. App. 1a. On September 14, 1995, petitioner filed his petition for rehearing and suggestion of rehearing *en*

banc. His petition for rehearing was denied by order filed October 17, 1995. App. 13a. This Court's jurisdiction arises under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 301(a) of the Labor-Management Relations Act, 29 U.S.C. § 185(a), provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Section 9(a) of the National Labor Relations Act, 29 U.S.C. § 159(a), provides in relevant part:

> "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. . . ."

STATEMENT OF THE CASE

Petitioner's claims were for wrongful discharge and breach of the union's duty of fair representation ("DFR") in handling his grievance and unfair labor practice charges arising from his discharge from employment and the discharge of two other union stewards one month before his own discharge.

A. Facts

Petitioner Gregory Murray had five years seniority when he was discharged by the respondent employer, the Detroit Riverview Hospital and the Detroit-Macomb Hospital Corporation (referred to herein collectively as "the employer")[1] on a false accusation that he left his assigned area at the end of his shift without a relief employee present.[2] One of the other two discharged stewards had 18 years seniority. The circumstances suggested that the stated bases for the discharges were pretexts to remove activist stewards.

The respondent unions, Detroit Riverview Hospital Workers Local 2435, AFSCME (AFL-CIO), and Michigan AFSCME Council 25 (AFL-CIO) (referred to herein collectively as "the union"),[3] treated the discharge grievance as meritorious, and it demanded arbitration, but it failed to provide the arbitrator a contractually required notice of expedited arbitration, prompting the employer to refuse to arbitrate the grievance on timeliness grounds.

The collective bargaining agreement ("CBA") required expedited arbitration of all discharge cases pursuant to a provision negotiated for the first time in that agreement.

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[1] Petitioner's place of employment was the Detroit Riverview Hospital, which was owned and controlled by the Detroit-Macomb Hospital Corporation.

[2] Murray testified by affidavit that when he clocked out at 7:30 a.m., another admitting clerk was still on duty and was required to remain on duty until relieved. He was required by the employer's policies to leave when he did, at the expiration of his shift, because no overtime had been authorized for him and there was no emergency that would have warranted unauthorized overtime. After he clocked out, the remaining admitting clerk left the area, without relief. The issues were presented by summary judgment motions, and the court was required to credit Murray's uncontroverted account of his discharge.

[3] Both labor organizations were parties to the collective bargaining agreement, and they shared grievance processing responsibilities.

When petitioner was discharged, the CBA was three years old and the union had already processed at least seven discharge cases under its expedited arbitration procedure. Nevertheless, the union failed to modify its grievance processing procedures to provide notice to the arbitrator in expedited cases. In all of the cases that preceded the stewards' discharges, the employer protested the arbitration demands as untimely because the union failed to notify the arbitrator, and the union voluntarily withdrew every case from arbitration.

After the employer's objection to arbitration of the three stewards' cases, the union filed unfair labor practice ("ULP") charges challenging the discharges as anti-union discrimination and the employer's refusal to arbitrate arbitrability. However, the union filed the charges in the wrong forum (the Michigan Employment Relations Commission, instead of the National Labor Relations Board). By the time petitioner learned that the ULP charges had been filed in the wrong forum, the section 10(b) period, 29 U.S.C. § 160(b), had expired.

The union ultimately persuaded the employer to arbitrate the issue of arbitrability before three separate arbitrators. The union claimed in arbitration that its failure to provide timely notice to the arbitrators was deliberate: It reasoned that it was simply following its established procedure for the processing of grievances, and that the procedure for expedited arbitration was ambiguous because it failed to explicitly instruct that *the party demanding arbitration* was the party required to notify the arbitrator.[4] The union also claimed that the "newness" of the

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[4] The procedure provided in relevant part:

> *Step 5.* If the grievance is not resolved at Step 4, either party may give notice to the other party of its intent to arbitrate such grievance. Such notice shall be given within fourteen (14) calendar days (including Saturdays, Sundays and holidays) of the receipt of the Hospital's Step 4 answer. Arbitration demands shall be filed in one of the following ways:

provision for expedited arbitration of discharge cases, which included the notice requirement, should excuse its failure to modify its grievance processing procedures, and that it needed the extra time to investigate discharge cases fully.

All three arbitrators ruled that it was the union's duty to provide the contractual notice of arbitration. Each arbitrator rejected the union's alleged "contract interpretation." [5] Arbitrator Daniel wrote:

> "The arbitrator cannot conceive any reason why the union, in these many cases over a period of two

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> (1) Grievances involving layoff, recall from layoff, discharge or disciplinary suspension shall be processed through an expedited procedure. These grievances shall be heard by an arbitrator drawn from a preselected list of five (5) mutually agreed upon names. . . .
>
> (a) *Upon filing of a demand for arbitration, it shall be submitted to an arbitrator* selected on a rotation basis from the jointly agreed upon list. The arbitrator shall schedule and hold a hearing within ninety (90) calendar days from the date the arbitrator was notified of the assignment, and the arbitrator shall submit a decision within thirty (30) calendar days following the hearing. If post-hearing briefs are filed, they must be filed within seven (7) calendar days following the hearing, but the filing of briefs will not extend the time for the arbitrator's decision.
>
> * * * *
>
> (2) Grievances not involving layoff, recall from layoff, discharge or disciplinary suspension may be taken to arbitration as follows:
>
> (a) The parties shall promptly endeavor to agree in the selection of an arbitrator. If they have not so agreed within seven (7) days after the submission to arbitration, the Union shall, within the next seven (7) days request the American Arbitration Association to cause the selection of an arbitrator to be made . . . .

[5] Arbitrators Frost, in petitioner's case, and Glendon ruled that the union's failure was a jurisdictional defect. Arbitrator Daniel ruled that the failure was a nonjurisdictional defect that deprived the grievant of back pay for the period of the union's delay.

> years, would not have notified the arbitrator directly and, hence have avoided all trouble that resulted. It seems almost to be a stubborn obstinance and insistance on some inconsequential principal. It might also be that the union simply was in a position where it could not evaluate cases in the fashion it wished and often was forced to file for arbitration when it had not quite decided whether to arbitrate. Whatever the reason, it is obvious the union could have avoided the problem in each of these cases by notifying the arbitrator after having filed the demand for arbitration."

In denying Baker's grievance, Arbitrator Glendon commented:

> "And it must be noted that the Union has it in its power to avoid such disputes by the simple method of simultaneous notice to the Employer and the arbitrator when the arbitration demand is filed, which, as noted in the Employer's post-hearing brief, would involve no great expense or hardship and still would leave time for further review of the grievance prior to the actual hearing."

Arbitrator Frost, in the petitioner's case, expressly adopted the conclusion of Arbitrator Glendon that the union's position "[o]bviously . . . makes no sense." Arbitrator Frost noted that the union's position was "inconsistent with the well-established contractual intent to expedite final resolution of discharge grievances," and that "it is illogical to assume any obligation other than on the moving party for perfecting that appeal."

The arbitrators characterized the union's conduct as indefensible. Arbitrator Daniel wrote:

> "This was not a new dispute for the union and the employer. It had arisen on numerous occasions in 1989 and 1990 and the employer had consistently declined to arbitrate any case where the union did not initiate the contact with the arbitrator at the

> same time that it filed. The record reveals that routinely over the years, these cases were withdrawn or processed no further by the Union. In January 1990, the employer declined seven cases on the basis of their untimely filing and this was in addition to numerous letters previously sent by the employer to the union insisting that there was a failure in many cases to follow the procedure."

As a direct result of the union's acts and omissions, petitioner was deprived of hearings on the merits of his grievance, which the union considered to be meritorious, as well as his ULP claim.

B. Proceedings Below

After exhausting his internal union remedies, petitioner filed suit in state court on August 11, 1993. On September 2, 1993, the defendants removed the action to the United States District Court for the Eastern District of Michigan under 28 U.S.C. § 1441(b), as an action arising under 29 U.S.C. § 185. The steward with 18 years seniority when she was discharged, Darlene Baker, filed suit, completed discovery and lost her case in summary judgment proceedings just as discovery was getting underway in the instant lawsuit. *Baker v. Detroit Riverview Hospital et al.*, 834 F. Supp. 216 (E.D. Mich. 1993), *aff'd.*, Docket No. 04-2426 (6th Cir. 1995). The parties in the instant case stipulated to stay discovery pending the filing and disposition of cross summary judgment motions limited to the duty of fair representation issues.

While preparing his summary judgment motion, petitioner obtained documents from Baker's counsel that revealed the union had learned of its negligent misfiling of the ULP case in the wrong forum when the employer answered the ULP charge with an affirmative defense objecting to the state commission's subject matter jurisdiction—*i.e.*, while there was still time to refile petitioner's case before the NLRB within the 10(b) period. How-

ever, presumably because it was already too late to salvage Baker's case, the union had willfully concealed its mistake from all of the grievants until after the section 10(b) period expired on all three cases. On the basis of this newly acquired evidence, one month after discovering the claim and before the parties' stipulated stay of discovery expired, petitioner moved to amend his pleadings to add a willful concealment claim.

On February 1, 1994, the district court entered orders granting respondents' motions for summary judgment and denying petitioner's cross motion for summary judgment and his motion to amend the complaint. App. 8a. The district court disregarded the evidence that the union had known it was required to notify the arbitrator of its demand for expedited arbitration, but had stubbornly refused to modify its grievance processing procedures to accomodate that duty: the employer's "consistent and firm" timeliness objections (the employer's characterization) in every prior discharge case; the union's voluntary withdrawal of all of its discharge cases from arbitration upon the employer's timeliness objection, until confronted by three discharged stewards, who understood their contract rights; and, perhaps most telling, the union's failure to file an interpretation grievance, a device that could have resolved the alleged interpretation dispute without sacrificing *any* meritorious discharge cases. The district court reasoned that the union's "contract interpretation" was—as a matter of law—"simply . . . an error of judgment or a business error, a misinterpretation of the manner in which a new contract should be administered, ..." App. 11a.

The court of appeals affirmed, refusing to concede even that the union's "contract interpretation" was a mistake. Rather, the appeals court affirmed on the ground that the union's alleged "contract interpretation" was—as a matter of law, contrary to the opinions of three arbitrators—"one sensible construction." App. 5a. As to the evidence that the union's position was not a bona fide contract

interpretation, but a *post hac* rationalization for a series of indefensible failures to act, the appeals court weighed the evidence against the petitioner, the non-moving party, on the basis of the court's own speculation: "A variety of unknown factors might have motivated the union in those prior instances." App. 5a.

The court below acknowledged that the union's first response to the employer's timeliness objection in this case was not to assert its alleged contract interpretation, but hurriedly to provide *untimely* notice to the *wrong* arbitrator, and that the union concealed its bungled attempt at notice from Arbitrator Frost. Nevertheless, the court refused to acknowledge the permissible inference favoring the non-moving party of such evidence on summary judgment. The court reasoned that the union's concealment of this evidence from Arbitrator Frost was not irrational, since to reveal its bungled and untimely attempt at notice "could be construed as an acknowledgment that the CBA required such notice." App. 5a-6a. The court of appeals failed to acknowledge that its own articulation of why the union acted rationally in concealing its own bungling from the arbitrator was precisely why the evidence supported the petitioner's fair representation claim.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER CIRCUITS AND RAISES IMPORTANT QUESTIONS OF LAW THAT THIS COURT SHOULD RESOLVE

1. The "rationality" standard for the "arbitrary action" prong of the duty of fair representation in contract administration has received varied and conflicting definition in the lower courts following *ALPA v. O'Neill*, 499 U.S. 65 (1991). The Second Circuit recently endorsed the Ninth Circuit standard of liability for

> "acts of omission which, while not calculated to harm union members, 'may be so egregious, so far short of minimum standards of fairness to the employee and so unrelated to legitimate union interests as to be arbitrary.' " [6]

The Tenth Circuit has endorsed a fiduciary standard of care.[7] The Seventh Circuit has abandoned its requirement of bad faith or invidiousness as an element of the claim.[8]

The post-*ALPA* decisions of the court below have been inconsistent.[9] The decision below conflicts with the post-*ALPA* decisions of other courts and defines *ALPA*'s rationality standard as an illusory safeguard against irresponsible union representation.

It is important that this Court elaborate upon the meaning of the fiduciary models expressly approved in *ALPA*: the duty of a trustee that was urged in dissent by Justice Kennedy in *Terry v. Teamsters*, 494 U.S. 558,

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[6] *Cruz v. International Brotherhood of Electrical Workers, Local 3*, 34 F.3d 1148, 1153 (2d Cir. 1994) (Pierce, J.), quoting and following the liability standard articulated in *Robesky v. Qantas Empire Airways Ltd.*, 573 F.2d 1082, 1090 (9th Cir. 1978).

[7] *Aguinaga v. United Food and Commercial Workers International Union*, 993 F.2d 1463, 1470-71 (10th Cir. 1993).

[8] *Herman v. Carpenters Local 971*, —— F.3d ——, 149 LRRM 2648, 2650-51 (7th Cir. 1995); *Garcia v. Zenith Electronics Corp.*, 58 F.3d 1171, 1176 n.2 (7th Cir. 1995); see *Bennett v. Local Union No. 66*, 958 F.2d 1429, 1437-1439 (7th Cir. 1992).

[9] The court below applied substantially different standards in each of its three most recent decisions. In addition to the decision below, compare *Black v. Ryder/P*I*E* Nationwide, Inc.*, 15 F.3d 573 (6th Cir. 1994) (burden of proof requires proof that union's conduct was "*extremely* arbitrary"; plaintiff met burden by showing union failed to interview or call the one witness who could have exonerated grievant) (emphasis added); with *Linton v. UPS*, 15 F.3d 1365 (6th Cir. 1994) (summary judgment for defendants reversed where union's failure to process grievance was based not on merits, but on fact that "company's position, right or wrong, was intractable").

584-88 (1990); and the fiduciary relationship between attorney and client urged by Justice Stevens in *Terry*, 494 U.S. at 582, or owed by a corporate officer toward shareholders. *ALPA*, 499 U.S. at 74, 75. This Court in *ALPA* cited with approval the standard of care imposed upon a trustee by the *Restatement (Second) of Trusts*, § 174 (1959), without indicating the extent to which this Court was actually adopting that standard.[10]

For the lack of clear definition, the historical "impenetrable ambiguity" of the cause of action[11] continues to cause injustice and unnecessary litigation of cases that might never be filed or might be settled if the standards were clearer.

Neither the tort nor fiduciary models work satisfactorily *in unmodified form* as models for a union's duty to represented employees. The tort standard, specifically a neg-

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[10] "The trustee is under a duty to the beneficiary in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has or procures his appointment as trustee by representing that he has greater skill than that of a man of ordinary prudence, he is under a duty to exercise such skill."

The commentary explains:

"A trustee is liable for a loss resulting from his failure to use the care and skill of a man of ordinary prudence, although he may have exercised all the care and skill of which he was capable. On the other hand, if the trustee has a greater degree of skill than that of a man of ordinary prudence, he is liable for a loss resulting from the failure to use such skill as he has."

* * * *

"Whether the trustee is prudent in the doing of an act depends upon the circumstances as they reasonably appear to him at the time when he does the act and not at some subsequent time when his conduct is called in question."

[11] B. Aaron, "An Overview," in J.T. McKelvey, *The Changing Law of Fair Representation* 16 (1985).

ligence standard, has been widely criticized and overwhelmingly rejected by the courts, as unrealistically demanding and overly burdensome upon unions.[12] A literal fiduciary standard may be both too demanding, imposing liability for simple negligence, and not demanding enough, excusing unions for misconduct based upon legal counsel. See, e.g., Michigan's statutory definition of a corporate officer's fiduciary duty. M.C.L.A. §§ 1541a(1)(b) (liability for simple negligence), 1541a(2) (no liability for actions based upon professional advice).[13]

It is unlikely that this Court, in endorsing a fiduciary standard of care in *ALPA*, intended the lower courts to adopt in unmodified form the duty owed by a corporate officer to shareholders or the duty of an attorney to his client. Yet the fiduciary analogy provides a much needed moderating influence upon the rationality standard of care. This Court needs to provide the lower courts with a substantive definition of the fiduciary duty approved in *ALPA*.

Petitioner submits that an appropriate model for a rationality standard moderated by fiduciary elements is offered by the Second and Ninth Circuits' articulation of the standard governing acts of omission: conduct "so egregious, so far short of minimum standards, of fairness to the employee and so unrelated to legitimate union in-

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[12] See *Robesky v. Qantas Empire Airways Ltd.*, 573 F.2d 1082 (9th Cir. 1978) (Kennedy, J., concurring separately). Probably the closest any court has come to adopting a negligence standard was the decision of the court below in *Ruzicka v. General Motors Corp.*, 523 F.2d 306 (6th Cir. 1975). It was repudiated in later proceedings in the same case. 649 F.2d 1207 (1981).

[13] The federal labor laws impose both civil and criminal liability upon union officers for breaching specified statutory fiduciary operations. *E.g.*, Labor-Management Relations Act, section 302(b), 29 U.S.C. § 186(b); Labor-Management Reporting and Disclosure Act of 1959, section 501(a), 29 U.S.C. § 501(a); Employee Retirement Income Security Act, section 409(a), 29 U.S.C. § 1109(a).

terests as to be arbitrary." *Cruz v. International Brotherhood of Electrical Workers, Local 3, supra,* 34 F.3d at 1153.

A fiduciary standard of care would not have allowed summary judgment for respondents in this case, in which the union repeatedly capitulated to the employer's interpretation of the expedited grievance procedure, consistently losing on timeliness grounds every discharge grievance that the union deemed worthy of arbitration.[14] Such conduct is incompatible with even a relaxed fiduciary standard of care. No corporate officer would repeatedly act in a manner guaranteed to cause nothing but injury to his business and benefit to its competitors; and no attorney would consistently follow procedures guaranteed to lose case after case.

2. The decision below conflicts with this Court's definition of "arbitrary" action in *ALPA*. *ALPA's* rationality standard is an inquiry into the *adequacy* of the union's representation, 499 U.S. at 75, not a labor law equivalent of the fourteenth amendment's "rational basis" test.[15]

The district court below found that the union's actions were shielded from jury scrutiny because they could "not be called wholly irrational." App. 11a. The appeals court panel concluded that the union was shielded from trial because "[a] variety of unknown factors might have

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[14] Ironically, the union's conduct was more favorable to grievants having weak discharge cases than to grievants having clearly meritorious cases. A union is more likely to be willing to compromise weak cases by pre-arbitration settlement agreements than cases that it deems so strong on the merits that compromise is unwarranted.

[15] *Lewis v. Tuscan Dairy Farms, Inc.*, 829 F. Supp. 665, 668 (S.D.N.Y. 1993), on remand for further consideration in light of *ALPA v. O'Neill, Alier v. Tuscan Dairy Farms*, 979 F.2d 946 (2d Cir. 1992).

motivated the union" in earlier discharge cases under the expedited arbitration provision. App. 5a. In effect, both courts below applied their own respective articulations of a too generously forgiving fourteenth amendment "rational basis" standard of judicial review, granting summary judgment because some unarticulated rationale for the union's conduct was *conceivable*. The court below erroneously interpreted this Court's rejection in *ALPA* of separate DFR standards for contract negotiations and contract administration as a signal that the same "wide lattitude" granted to union decision-making in the context of collective bargaining to end a strike was an equally appropriate measure of the degree of care to be expected from unions in processing discharge grievances.

A legislative "rational basis" test is an inappropriate model for the duty of fair representation, for at least two reasons. First, a legislature does not stand in a fiduciary relationship to the citizenry. *ALPA*'s rationality standard, on the other hand, governs decisions and actions affecting the welfare of employees that the union, exclusively, is empowered to make and that the affected employees themselves lack the power to control and sometimes even to influence. Second, the fourteenth amendment rational basis test applies only to statutes that do not implicate any fundamental right or suspect classification, while *ALPA*'s rationality standard governs *all* cases, including, as in this case, workplace "capital punishment" having potentially devastating and wide-ranging impact upon the worker, his or her family, and their future livelihoods. Even less potentially cataclysmic grievance cases often profoundly affect the most basic aspects of a worker's life: his earnings, hours, the safety and quality of life in the place he spends most of his time—his workplace.

While this Court admonished in *ALPA* that the rationality standard is moderated by the "factual and legal landscape," so-called "garden variety hybrid section 301

cases" have often suffered cruelly ritualistic fates, despite the desperation implicit in a federal court lawsuit filed by an unemployed head of household. It is inappropriate for courts to dispose of cases that involve such fundamental human interests as are involved in the typical "garden variety hybrid section 301 case" by ritualistic formulas, without meaningful attention to the merits.

The odds of winning a hybrid DFR case are staggeringly small. "An analysis of the data available . . . leaves little doubt that plaintiffs hardly ever prevail in duty of fair representation litigation." Goldberg, "The Duty of Fair Representation: What the Courts Do in Fact," 34 *Buffalo L. Rev.* 89, 135 (1985):

> [P]laintiffs prevailed on the merits of their claim in only 4.3% of the duty of fair representation cases generating published opinions between 1977 and 1983, and they prevailed in an even smaller percentage (1.6) of the cases filed in three district courts between 1977 and 1982. . . . [S]ettlements favorable to plaintiffs were obtained in . . . 3.7% of the total number of cases surveyed in the courthouse files." *Id.* 136.

A rationality standard that compels judgment against the nonmoving party on the basis of "unknown factors" that "might" have motivated the moving party provides an illusory cause of action—the sort of standard that produces a 3.7% success rate.

3. The decision by the court below conflicts with the established rule of DFR liability that a union is liable for failing to meet a contractual deadline that deprives the grievant of a hearing on a discharge grievance deemed meritorious by the union. In the decision below, the court excused a union from the catastrophic consequences of its failure to file timely, despite a "consistent and firm" employer past practice of refusing to excuse untimeliness. The panel's decision in the instant case cannot be recon-

ciled with the settled rule of union liability, followed by the First, Second, Fourth, and Ninth Circuits, and until now by the Sixth Circuit, for unintentional acts or omissions evidencing reckless disregard for the employee's rights and severely injuring his interests.[16]

CONCLUSION

Petitioner respectfully requests the Court to grant the writ of certiorari.

Respectfully submitted,

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January 16, 1996

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[16] *Young v. United States Postal Service*, 907 F.2d 305 (2d Cir. 1990); *Dutrisac v. Caterpiller Tractor Co.*, 749 F.2d 1270 (9th Cir. 1983); *Robesky v. Qantas Empire Airways Ltd.*, 573 F.2d 1082, 1090 (9th Cir. 1978) (collecting cases); *Foust v. International Bhd. of Electrical Workers*, 572 F.2d 710 (10th Cir. 1978), *mod. to reverse award of punitive damages*, 442 U.S. 42 (1979); *Ruggirello v. Ford Motor Co.*, 411 F. Supp. 758, 760 (E.D. Mich. 1976); see *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976); cf. *Milstead v. International Bhd. of Teamsters*, 580 F.2d 232 (1978) (union breached DFR by processing grievance under terms of expired labor agreement); but cf. *Ruzicka v. General Motors Corp.*, 649 F.2d 1207 (6th Cir. 1981) (*Ruzicka II*) (union not liable for "failure to timely file the grievance . . . due to reliance on the prevailing practice of freely granted extensions").